

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION

This document relates to:

*Sysco Corporation v. Agri Stats,
Inc., Case No. 21-CV-1374*

)
) COURT FILE
) NO. 18-CV-1776 (JRT/JFD)
)

) VIA
) ZoomGov VIDEO CONFERENCE
)

IN RE CATTLE AND BEEF ANTITRUST
LITIGATION

This document relates to:

*Sysco Corporation v. Cargill,
Inc., Case No. 22-CV-1750*

)
) COURT FILE
) NO. 22-MD-3031 (JRT/JFD)
)

)
)
) Wednesday, April 5, 2023
) St. Paul, Minnesota
) 8:30 A.M.

HEARING ON

SYSKO CORPORATION'S MOTION FOR A LIMITED STAY

- AND -

BOIES SCHILLER FLEXNER, LLP's MOTION TO WITHDRAW AS COUNSEL

BEFORE THE HONORABLE JOHN F. DOCHERTY
UNITED STATES MAGISTRATE JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CRC

Official Court Reporter - United States District Court
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* * * *

1 (8:30 a.m.)

2 P R O C E E D I N G S

3 IN OPEN COURT

4 (VIA ZoomGov VIDEO CONFERENCE)

5 THE CLERK: Okay. We'll be getting started
6 shortly when Judge Docherty turns on his audio and video.
7 That will mark the start of the hearing. Are there any
8 questions before we get started?

9 (No response)

10 THE CLERK: Okay.

11 (Pause)

12 THE COURT: Good morning, everybody. This is
13 Magistrate Judge Docherty. We are here this morning in both
14 the Pork and the Beef MDLs to consider a couple of things.
15 And just so the record is clear, I'm going to give the
16 docket numbers of these motions in both cases.

17 First up, we'll consider the motion of the Boies
18 Schiller Flexner law firm to withdraw as counsel for Sysco.
19 That is docket number 1882 in the Pork MDL, which is
20 18-CV-1776.

21 Would those who are not speaking be so good as to
22 silence their microphones? There's considerable background
23 noise that I'm picking up. Thanks much.

24 That motion is docket number 185 in Cattle, which
25 is 22-MD-3031.

1 After that we'll consider Sysco's motion for a
2 limited stay. That's docket number 1843 in Pork and docket
3 number 164 in Cattle.

4 So let's begin, as I say, with Boies Schiller's
5 motion to withdraw.

6 Mr. Gant, I have read your moving papers, I've
7 read those of Sysco as well. Mr. Gant, is there anything to
8 say over and above what's in the papers?

9 MR. GANT: First of all, Your Honor, I am getting
10 over a bout of COVID, so I hope you can hear me and
11 apologize I'm not on camera, but I don't have anything to
12 add. As you know, we wished we could have been able to tell
13 you more, but we could not obtain Sysco's consent to do so,
14 so we'll have to rest on our papers unless you have any
15 questions for me that I may be able to answer.

16 THE COURT: All right. Mr. Boylan, do you have
17 anything to say on behalf of Sysco?

18 MR. BOYLAN: Your Honor, by way of update more
19 than on the substance, since our last filing -- and I think
20 this relates to both motions, but I'll set the table now if
21 it's all right with Your Honor.

22 Since our last filing we've made progress in
23 securing new counsel, replacement counsel. We spoke with
24 additional firms. They've lined up who they hope is going
25 to be the new counsel. They've cleared conflicts. They've

1 even started working, I think are close to finalizing and
2 getting an engagement letter executed.

3 Your Honor, Burford, the litigation funder, hasn't
4 yet consented to that, but we're in the process of trying to
5 obtain that consent so that representation can move forward
6 immediately.

7 More generally -- and I know Your Honor took a
8 look at some of the other filings in Illinois and whatnot.
9 We continue to be in a position where Sysco can't settle
10 these claims because Burford is standing in the way,
11 blocking those, including this case, and they haven't
12 withdrawn a recent threat to use a provision in the original
13 funding agreement to take control of this case.

14 Finally, Your Honor, just by way of update,
15 Sysco's petition in Illinois has not yet been ruled on.
16 It's pending, it's been updated, but it hasn't been ruled
17 on.

18 THE COURT: All right. Well, thanks for the
19 update, and yes, I'll have more to say about some of those
20 topics a little later. I won't have much more to say,
21 though, because what I'm going to say is that there's no
22 motion or other request for relief pending, but let's table
23 that for now.

24 Is there anyone else who wishes to be heard on
25 this motion before -- I mean, I think I'm ready to rule on

1 it, but anyone else?

2 MR. BOYLAN: Your Honor, I'm looking at my notes
3 here. One thing I want to be absolutely clear about, our
4 proposed order on the stipulation that was denied included
5 some express language that I want to make sure I flag for
6 Your Honor and that would be included in any order here.

7 It was agreed that Boies Schiller's withdrawal
8 will be without prejudice to either BSF or Sysco in
9 asserting any claim or defense that they may have against
10 each other as a result of the withdrawal. That's pretty
11 important language for other reasons and I just wanted to be
12 clear with Your Honor that I think that's agreed to as well,
13 and I want to be certain that if withdrawal is granted
14 that's included in the order.

15 THE COURT: Okay. I'm not sure anyone else has
16 the ability to weigh in on this, which seems to me to be
17 between Boies Schiller and its still client Sysco, but if
18 anyone does, speak now.

19 MR. ELLISON: Yes, Your Honor, if I may briefly.
20 Just speaking on behalf of National Beef, Cargill
21 and Tyson, the one thing I'll add is -- and Your Honor's
22 probably contemplating this already, but to the extent
23 you're going to grant the motion to withdraw counsel, we
24 would just suggest some sort of firm time frame on entry of
25 appearance of new counsel just to keep things moving.

1 THE COURT: That will be part of the motion to
2 stay, okay?

3 Anyone else?

4 (No response)

5 THE COURT: All right. I'm going to rule on this
6 one right away. I'm not going to be issuing a written
7 order. The transcript of what I'm about to say will be the
8 ruling of the Court for purposes of any further review.

9 I don't think I have any discretion to do anything
10 but grant this motion and here's why:

11 All attorneys who practice before this Court,
12 whether or not they're admitted to the bar of the Minnesota
13 Supreme Court are bound by the Minnesota Rules of
14 Professional Conduct, and that's found in Local
15 Rule 83.6(a).

16 Turning to the Minnesota Rule of Professional
17 Conduct that applies here, it's Rule 1.16(a)(3), it's
18 unequivocal, and to quote: "A lawyer shall withdraw from
19 the representation of a client if the lawyer is discharged."

20 Boies Schiller Flexner represents and Sysco
21 confirms that in a February 23rd, 2023 email from Barrett
22 Flynn, who's in-house counsel at Sysco, to Boies Schiller
23 Flexner, Sysco discharged Boies Schiller and therefore BSF
24 must withdraw and I must grant their motion.

25 Local Rule 83.7 gives attorneys three mechanisms

1 for withdrawing from representation. They can give notice
2 of withdrawal if they're part of a team of lawyers and other
3 members of that team are going to remain the party's counsel
4 of record. They can under 83.7(b) give notice of withdrawal
5 and substitution if everybody's getting off, but substitute
6 counsel is lined up and ready to go. Neither of those
7 situations is present here and therefore we're proceeding
8 under Local Rule 83.7(c), which is a motion.

9 Boies Schiller has filed the motion which is the
10 appropriate method. I have not seen any opposition to Boies
11 Schiller's motion. I gave everyone a chance to weigh in
12 just a couple of minutes ago, and although one party did
13 comment, nobody opposed the motion. Rule 83.7(c) requires
14 notice to the client and good cause. Sysco has been
15 notified and Sysco's discharge of Boies Schiller constitutes
16 good cause.

17 Therefore, Boies Schiller's motion to withdraw as
18 counsel for Sysco is granted. They are off the case. This
19 is done without any prejudice to any rights that Boies
20 Schiller may have or that Sysco may have against each other.

21 Mr. Boylan, does that cover your concern?

22 MR. BOYLAN: It does, Your Honor. Thank you.

23 THE COURT: All right. That motion is granted.

24 Let's proceed, then, to Sysco's motion for a
25 limited stay, docket number 1843 in Pork, docket number 164

1 in Cattle.

2 I understand that Sysco is moving for a 60-day
3 stay in order to find substitute counsel. That motion was
4 filed on March the 10th, and if my arithmetic is right, that
5 was 26 days ago, meaning if that motion had been granted on
6 the day it was filed, 34 days would be left on the stay.
7 Thirty-four days from today is Monday, May the 8th of 2023.

8 Mr. Boylan, do you have anything further other
9 than the update you gave us about Sysco's efforts to retain
10 new counsel? Anything further to say on your motion for a
11 limited stay?

12 MR. BOYLAN: Your Honor, I'll try to be really
13 brief. In light of the oppositions that we received -- and
14 generally, I think you could characterize them as
15 non-oppositions to at least a 30-day stay as well -- there
16 was some commentary that a couple of parties made, but those
17 relate to kind of the Burford issue, so I'm not going to
18 wade into that. If we had had a reply memorandum, I think
19 we would have adjusted our request to Your Honor in the
20 following way:

21 In the Beef case, rather than asking for 60 days,
22 what we would request from Your Honor is an order staying
23 the action for 30 days only as to Sysco -- because I think
24 there's been some question of, you know, what ramifications
25 are there elsewhere -- it's only as to Sysco to allow us to

1 obtain replacement counsel, 30 days from today, so that gets
2 us out to May 3rd -- or May 5th, excuse me -- I believe.

3 Within Beef, we also submitted a letter on
4 March 24th about this kind of interim deadline that fell.

5 THE COURT: Right.

6 MR. BOYLAN: We'd ask that the order granting our
7 stay allows the deadline for us to complete the production
8 to be extended to May 3rd of 2023.

9 Part of the reason I mention the update about our
10 optimism about new counsel is we're feeling pretty confident
11 they're going to be able to step in and make that
12 production, and so that will just give us till May 3rd.

13 And finally -- and this is a little bit -- it's
14 addressed by our papers and I think that it makes sense
15 under the circumstances, Your Honor.

16 To the extent that any new deadlines emerge or
17 arise between now, hopefully the date of your order, and
18 whenever replacement counsel makes its appearance -- this is
19 kind of the unknown. I don't know if anything's going to
20 happen here or not, but to the extent that a deadline were
21 to arise, we'd ask that Your Honor enter an order that
22 allows those deadlines, those new unanticipated deadlines as
23 of this moment, to be extended until 14 days after
24 replacement counsel appears. We think that's fair under the
25 circumstances. Because the stay to find replacement counsel

1 is limited to 30 days, it's a pretty modest request, Your
2 Honor, and really we're solving for the unknown there of a
3 deadline that might emerge in the next couple of weeks that
4 we're unaware of at this present moment.

5 On the Pork side of the case, I think we just need
6 the 30 days to obtain replacement counsel. It's stayed only
7 as to Sysco just for 30 days to find replacement counsel and
8 the same sort of protective 14-day window in the event that
9 there's this strange, unanticipated deadline that arises in
10 the next couple of weeks.

11 Your Honor, I know this is different from what we
12 had set forth originally, but I think that it makes sense in
13 light of the oppositions and non-oppositions and commentary
14 that we've received from others. It maintains the objective
15 of keeping the overall case schedule in place. It limits
16 our request only to 30 days. And to the extent that we got
17 any responses, it was: Boy, you should be able to do it
18 within 30 days. And finally, it resolves this April 3rd
19 deadline that has come and gone during the pendency of this
20 motion.

21 And so, Your Honor, we think that's reasonable, we
22 think it's the right outcome under these highly unusual
23 circumstances, and I'd just reserve the ability to respond
24 to any comments or questions that you may have or any points
25 are raised by others. Otherwise, I think you understand how

1 I'm thinking about this in our new request, and if it's
2 helpful to Your Honor, we could submit newly amended
3 proposed orders that are consistent with my comments this
4 morning.

5 THE COURT: Okay. You've mentioned a couple of
6 times, Mr. Boylan, non-opposition but comment. I'm not
7 aware of any written opposition as in don't grant the stay,
8 period. I'm aware of people saying we're concerned about
9 what this might mean, but we understand Sysco's in a tough
10 spot and they need to get some breathing room.

11 Are you aware of anything I've missed? Is anyone
12 flatly opposed to granting the stay?

13 MR. BOYLAN: Not when you call it 30 days, Judge.
14 To the extent they've said, anything they've said, deny it
15 as to 60, but 30 would be okay. That's kind of what I mean
16 by a non-opposition to a 30-day stay. I think there's one
17 that came in that said 60 days might be a little too long,
18 and that's why we've revised our request here to comport
19 with that sort of position.

20 THE COURT: Okay. And you have revised your
21 request, but as noted. And, you know, this isn't your
22 fault, but 26 days have come and gone. So really if it's 30
23 this morning, the request is for 56 days, is that -- well,
24 let me open it up to everyone then. If that request was
25 granted and the stay remained in place until the 3rd of May,

1 is anyone opposed to that?

2 MR. ROBISON: Your Honor, Brian Robison for the
3 Pork defendants. I think the answer to that is no. We were
4 one of the groups that put in what I would call kind of a
5 non-opposition with a comment. In the Pork cases there's a
6 June expert disclosure deadline and the defendants' only
7 concern with a stay into May is whether Sysco believes it
8 would need to get its own expert disclosure deadline past
9 the June deadline when all the other plaintiffs are going to
10 be disclosing experts.

11 So, I think again our answer is no, we're not
12 opposed. We understand Sysco's in a tough spot and needs
13 breathing room. We just want to keep all the plaintiffs in
14 the pork cases on the same expert deadline.

15 THE COURT: That's a good point.

16 Mr. Boylan, if this case is stayed as to Sysco
17 until the 3rd of May, what do you anticipate about that
18 expert disclosure deadline?

19 MR. BOYLAN: We do not expect any issue with
20 Sysco's ability to meet that June 5th expert disclosure
21 deadline.

22 THE COURT: All right. Mr. Robison, anything
23 further?

24 MR. ROBISON: No, Your Honor.

25 THE COURT: Okay. Anyone else?

1 MR. ELLISON: Your Honor, if I may, Ben Ellison
2 again for National Beef and I'm speaking on behalf of
3 Cargill and Tyson as well in the Beef litigation.

4 So based on what Mr. Boylan has said about the
5 specific deadline in Beef litigation, which is the
6 substantial production for the priority custodians, it
7 sounds like he's agreeing to what we propose, which was just
8 move that solid date to a date certain of May 3rd, so
9 obviously to that we're not opposed.

10 As far as the additional request as to 14 days
11 after replacement counsel for any other deadlines that
12 emerge, I think that's just sort of uncertain at this point.
13 We don't know what deadlines could emerge. There are
14 certainly no pending motions that would affect Sysco right
15 now, but we just suggest maybe that should be done on a
16 case-by-case basis depending on what might come up in the
17 interim, and again, we don't foresee any motions in the near
18 future. So that's our response to that.

19 We're encouraged, obviously, by the progress that
20 seems to be being made that Mr. Boylan has talked about and
21 it does not sound like what Sysco is asking for is for every
22 deadline subsequent to this to be moved by 30 days. So as
23 to the date certain for production of documents, we have no
24 opposition to that. It's what we said we would agree to in
25 our papers.

1 THE COURT: All right. Any other commentary?

2 (No response)

3 THE COURT: All right. Here is the Court's ruling
4 on Sysco's motion for a limited stay. Once again, I don't
5 anticipate putting out a written order and the transcript of
6 what I'm about to say is going to be the order of the Court
7 for any purposes of further review.

8 Sysco originally moved for a 60-day stay just as
9 to Sysco in order to find substitute counsel for Boies
10 Schiller. They pointed out that while usually it would be
11 easy for a large, sophisticated company like Sysco to find
12 replacement counsel, again, they allege -- and at this point
13 I want to make clear that although I'm reading what Sysco is
14 saying about Burford, I am taking what they are saying as
15 allegations at this point. I've not heard anything from
16 either Boies Schiller or from Burford. But that Burford
17 allegedly was asserting approval authority over settlements
18 and was otherwise involving itself in the litigation and
19 that that made it difficult for Sysco to find replacement
20 counsel.

21 The motion is granted as modified. As mentioned,
22 26 days have elapsed since the motion for a stay was
23 granted. Sysco through Mr. Boylan has stated this morning
24 that a continued until the 3rd of May would be adequate,
25 which would be a -- until the 3rd of May would be adequate,

1 and therefore the stay is granted as to Sysco only. It runs
2 from today to and including May the 3rd of this year.

3 I reviewed the docket in both the Cattle case and
4 the Pork case before this hearing. I did not see any events
5 that appear to be scheduled on the docket between now and
6 May the 3rd. I didn't see any deadlines between now and May
7 the 3rd. But I nevertheless do need to say that two law
8 firms, Anthony Ostlund and Frankfurt Kurnit, have entered
9 appearances for Sysco and have stated that they are doing so
10 in a limited capacity and making clear that they are not
11 becoming Sysco's counsel in either of those antitrust MDLs.

12 Because Sysco is a corporation, it cannot
13 represent itself. The firm that used to represent Sysco,
14 Boies Schiller, was excused from the case a few minutes ago.
15 Nothing is scheduled between now and the expiration of the
16 stay and so I feel confident that nothing will happen, but
17 if something does and Sysco needs legal representation even
18 on the antitrust MDLs between now and the 3rd of May, those
19 law firms should understand that the Court will be looking
20 to them as Sysco's lawyers even if that is just until they
21 can engage other counsel. And of course Sysco can limit its
22 exposure to this term of events and so can Anthony Ostlund
23 and Frankfurt Kurnit, by moving with alacrity to get
24 replacement counsel onboarded and an engagement letter
25 signed and exchanged.

1 I also want to make clear, if I haven't already,
2 that I am deliberately saying nothing about the situation
3 that is alleged to have precipitated the withdrawal of Boies
4 Schiller. I don't need to say anything about that in order
5 to resolve the two motions today and therefore I will say
6 nothing.

7 Lastly, in the Beef case only, Mr. Boylan has
8 filed a letter at docket number 186 about the April 3rd
9 deadline for Sysco to complete document production as to two
10 what are called priority custodians. That deadline was set
11 by a prior order of this Court at docket number 129, and
12 that deadline for the reasons set forth in Mr. Boylan's
13 letter and for the REEPS developed on the record of this
14 hearing here this morning is also extended to Monday, May
15 the 3rd -- or to May 3rd. I don't know if it's a Monday. I
16 shouldn't have said that.

17 All right. Mr. Boylan, anything further that
18 needs to be in that order from your point of view?

19 MR. BOYLAN: No, Your Honor. And if it is -- as I
20 offered before, if it is helpful, we could submit a proposed
21 order, but it sounds as though we've got that covered.

22 THE COURT: No. And the only thing that I'm not
23 granting is the request for an automatic stay of 14 days
24 until new counsel can be engaged if something comes up. If
25 something comes up, you're going to be back here and you're

1 going to be talking about what you need in order to address
2 whatever situations come up. I didn't think given that
3 anything that comes up between now and May the 3rd will by
4 definition be unexpected, that it made sense to have a rule
5 that would apply to every possible situation. If something
6 comes up, we're going to need to get together and talk about
7 it and you and a lawyer from Frankfurt Kurnit will need to
8 be here to be part of that discussion in a capacity as
9 counsel for Sysco.

10 MR. BOYLAN: Understood your ruling, Your Honor.
11 Thank you.

12 THE COURT: Okay. Any requests for clarification
13 or any questions about either the ruling on the Boies
14 Schiller withdrawal motion or the motion for a limited stay
15 with its being different slightly in the Beef case because
16 of that production deadline that's in Beef, but not in Port?
17 Any questions?

18 MR. ROBISON: Your Honor, Brian Robison for the
19 defendants.

20 I think I fully understand the Court's ruling on
21 the stay and I agree. I don't see anything in the Pork
22 cases on the schedule as far as discovery deadlines, that
23 sort of thing.

24 I did just want to point out there is a status in
25 the Pork cases on April 20th, and it sounds like from the

1 Court's ruling if Sysco has new antitrust counsel by that
2 time, obviously that law firm would handle the status
3 conference. It not, it sounds like Your Honor wants the two
4 law firms that have already appeared to handle that for
5 Sysco. I just wanted to make sure that was clear.

6 THE COURT: Mr. Boylan, what's your view on that?

7 MR. BOYLAN: Your Honor, I think Mr. Robison has
8 accurately stated your expectations with regard to items
9 that may come up between now and whenever replacement
10 counsel formally notices its appearance, and so if there is
11 a status conference -- I wasn't aware of that -- if there is
12 a status conference, we'll have to make sure that we've got
13 that covered.

14 THE COURT: Okay. Understood.

15 All right. I think that's it. Thank you all very
16 much for being here. Have a good rest of the day. Court is
17 adjourned.

18 VARIOUS COUNSEL: Thank you, Your Honor.

19 (Proceedings concluded at 9:06 a.m.)

20 * * * *

C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter
for the United States District Court, do hereby
certify that the foregoing pages are a true and
accurate transcription of my shorthand notes,
taken in the aforementioned matter, to the best
of my skill and ability.

/s/ Timothy J. Willette

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